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C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000235

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TAGS: PGOV PREL PHUM UP

SUBJECT: UKRAINE: SHCHERBAN CASE BEING SWEPT UNDER RUG

REF: A. 05 KIEV 3144

¶B. 06 KYIV 4233

Classified By: Political Counselor Kent Logsdon for reasons 1.4(a,b,d).

¶1. (C) Summary. It appears increasingly unlikely that former Sumy governor Volodymyr Shcherban, accused of election rigging and a number of other serious charges, will end up in court. Shcherban, who fled to the U.S. in the spring of 2005 to avoid arrest in Ukraine, was detained for overstaying his visa, and eventually agreed to voluntary departure and return to Ukraine in November 2006 after the Yanukovych Government came to power. Regions MPs posted bail for Shcherban upon his arrival, and the Prosecutor's Office seems uninterested in pursuing the case, although it remains officially open for now. If Shcherban had been tried and convicted, he would have been the most senior official to be convicted of election violations from 2004.

¶2. (C) Comment: A number of recent developments related to Shcherban and his past associates underscore Ukraine's changing political and legal dynamics: the Sumy prosecutor's office announced on January 22 that it was considering prosecuting seven witnesses who had provided testimony in a related case that landed Shcherban's associate in jail for election fraud; the Sumy police chief who carried out election-related violence at Shcherban's request in August 2004 is now Deputy Interior Minister; and Shcherban is even considering a return to politics. People we spoke with in Sumy now appear more guarded--a marked change from the optimism we heard there in August 2006. Despite the criminal case against Shcherban formally remaining open, we do not expect Shcherban to be convicted or even required to appear in court. End summary and comment.

A brief recap of Shcherban

¶3. (SBU) Volodymyr Shcherban stands accused of election rigging, extortion, tax evasion, and abuse of office during his terms as governor of Sumy province (1999-2004). (Note: ref A reviewed extensive Embassy coverage of Shcherban's activities over the years. End Note) Ukrainian criminal charges were filed in April 2005, in the aftermath of the Orange Revolution. Shcherban fled Ukraine in March 2005 and entered the U.S. in April on a B-2 visa. He was served notice to appear before a U.S. immigration court in October 2005 after overstaying his visa; he eventually agreed to voluntary departure in October 2006. Two of Shcherban's Sumy associates, former mayor Volodymyr Omelchenko and former local council member Olha Krutushkina, are the highest ranking officials to be convicted of abuse of office and 2004 election-related crimes under the Kuchma regime. Both were sentenced to multi-year prison terms, although Krutushkina was recently released early (see below).

A Notorious Figure Returns...

¶4. (SBU) Shcherban returned to Ukraine on November 4, where he was remanded to custody to await formal charges. In a twist, the Prosecutor's Office allowed three MPs from the Party of Regions to post bail and take Shcherban home to wait under unmonitored "house arrest." (ref B) Shcherban and his U.S. lawyers launched a high-profile press campaign vigorously defending his actions in 2004 and denying the charges levied against him. In a December 22 press interview, Shcherban acknowledged that his two million dollar bail had been paid by Regions MP and financier Rinat Akhmetov. (Note: Shcherban's son, also a Regions MP, works as an executive for an Akhmetov-controlled company).

...Awaits Judgment...

¶5. (C) The Ministry of the Interior (MOI)/police initially pursued the charges against Shcherban vigorously, but once they sent their findings to the Prosecutor General's office (PGO), the case slowed to a crawl. Then Interior Minister Lutsenko blasted PGO inaction in the Shcherban case to Ambassador November 19, claiming the MOI/police were in "open warfare" with the PGO. Prosecutor-General Medvedko claimed to an interviewer on December 25 that Shcherban case was moving very slowly because witnesses wanted Shcherban to be present when they testified; the case had been held up until Shcherban returned to Ukraine. He added that if they found the basis for prosecuting Shcherban, they would.

¶6. (SBU) A January 23 letter from the PGO in answer to LegAtt's official letter of inquiry on the status of the Shcherban investigation reported that the tax evasion case had been closed due to lack of evidence. Charges were still

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pending on three other alleged crimes--prevention of exercising electoral rights; infliction of bodily injuries on a judge or law enforcement officer; and overstepping authority that led to harming the rights of a group of people. The letter said that they were also investigating three other possible crimes. The letter closed by stating that when all investigations were complete, a "well-grounded decision" would be made.

...And is Reborn?

¶7. (SBU) In a lengthy December 22 interview with on-line news site Glavred, Shcherban insisted that he was no longer a suspect, but rather a witness. He insisted that the charges against him had been falsified and he was waiting for them to be lifted. He claimed that Yuriy Lutsenko, when Minister of the Interior, had targeted him for political reasons to increase his own stature. In the interview, he said he talked regularly to former President Kuchma and that Akhmetov was a friend. Shcherban then said that he wanted and was obligated to return to politics, once the criminal charges were cleared up.

¶8. (SBU) Interestingly, around the same time, an article appeared in Segodnya, a newspaper owned by Akhmetov, accusing presidential brother Petro Yushchenko of trying to force Shcherban to sell all his business interests. The article insinuated that the charges against Shcherban and his subsequent flight to the U.S. were a result of Shcherban's refusal to cooperate with Petro Yushchenko.

¶9. (C) Comment: While Petro Yushchenko is no angel, this story seems to have been planted to undermine the credibility of the ongoing investigation against Shcherban. End comment.

Developments on the Ground: The Old Team Vindicated?

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¶10. (C) Alla Fedorina of the Sumy Press club told us on January 24 that Shcherban has not been back to Sumy since he returned to Ukraine and that, in fact, he had sold off some of his business interests in the oblast. She told us that people had lost interest in the legal proceedings, but added that people felt insecure and were reluctant to tell the truth because they believed their lives may be in danger if they did. Perhaps supporting such sentiments, the Sumy prosecutor's office announced on January 22 that it was considering opening criminal cases against seven witnesses who testified against Shcherban associate Olha Krutushkina, who was sentenced to a 5-year jail term in 2005 for falsifying election results but released early in December 2006 after a Supreme Court ruling.

¶11. (C) The former head of Interpol's bureau in Ukraine Kyrylo Kulykov, who just left his job to work for Lutsenko's new civic movement, told us on January 31 that the witnesses in Shcherban's case had begun recanting once Shcherban returned to Ukraine. According to Kulykov, these people were afraid for their lives, but there was no way the MOI could offer adequate protection to all of them. In his view, at the end of the day, Shcherban would never be convicted.

¶12. (C) Comment: When we visited Sumy in August 2006, people seemed almost giddy to be free of what they had seen as Shcherban's repressive rule. Now people seem concerned that there may have been a reversal of gains made and are acting more cautiously. Fedorina said that people are convinced that either pressure or bribes were involved in the Supreme Court decision freeing Krutushkina, as well as the decision to prosecute the people whose testimony contributed to her conviction. A similar message of vindicating Shcherban's old Sumy team and forgetting past election-related sins was sent when former Sumy police chief, Mykhailo Plekhanov, who ordered the violent dispersal of student protesters in August 2004 at Shcherban's behest, was appointed as Deputy Interior Minister in December 2006. End comment.

¶13. (U) Visit Embassy Kyiv's classified website:
www.state.sgov.gov/p/eur/kiev.

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